

**Iowa Department of Natural Resources  
Environmental Protection Commission**

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**ITEM**

**7**

**DECISION**

**TOPIC**

Final Rule - Amendments to Chapter 135, Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks and Chapter 134, Certification of Groundwater Professionals

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Attached for adoption are the changes to Chapter 135 "Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks" and Chapter 134, "Certification of Groundwater Professionals." The commission acted on the Notice of Intended Action at the October 2005 commission meeting and the rules were published in the November 9, 2005 Iowa Administrative Bulletin. The amendments provide for the certification of UST compliance inspectors and third party inspection of regulated UST systems.

The department held three public hearings in Denison, Coralville and Des Moines. Twelve written and oral comments were received. The main concerns were the frequency of inspections, and not allowing inspectors to inspect sites of their employer or sites where they installed or serviced the equipment. Attached is a responsiveness summary on the comments received.

The Commission was very concerned at the October meeting on impartiality of the UST inspectors and the department's ability to detect fraudulent or inaccurate inspections. It was felt an employee of the tank owner/operator or an installer of the equipment could have a conflict of interest. The Commission was most interested in receiving public comment on this issue.

The Administrative Rules Review Committee (ARRC) reviewed the notice of intended action on December 13, 2005 and listened to public comment. Although the ARRC did not adopt a specific position by motion, it is fair to say that the sense of the committee appeared to be in favor of removing the restrictions that were intended to address the potential for conflict of interest for compliance inspectors. The ARRC appeared to be sympathetic to the comments of Casey's Marketing Co. and the Petroleum Marketers and Convenience Stores of Iowa (PMCI). They commented on the advantages of using in-house inspectors who are well trained, familiar with company equipment and who can be integrated into their environmental compliance management systems. Many ARRC committee members observed that there is some degree of inherent potential for conflict of interest given the financial relationship of the inspector and customer.

Casey's noted the DNR successfully allows self-inspection in other programs such as wastewater treatment plants and landfills. . Using their own inspectors would be more cost effective with an inspector familiar with their operations to schedule and inspect their USTs. This would allow for

a quicker response to environmental problems and coordination of repairs. Other comments received indicated restricting equipment installers from inspecting UST systems they installed or repaired rule would greatly limit the inspectors available for a tank owner. Sometimes more than one installer works on systems they own. These companies have the most knowledge of their UST system and they have confidence in the companies they hire. It was felt the inspector certification program includes training, oversight and disciplinary actions as safeguards.

The department feels the comments have merit and recommends removing these restrictions on inspectors from the rule. The electronic submittal of the inspection reports will allow the department to query inspection reports for anomalies to find and target potential problems with inspectors. As long as the department maintains adequate field office personnel to audit the compliance inspectors, the department should be able to detect and resolve problems.

The proposed rules required annual inspections. PMCI supported annual inspections of UST systems. Currently, approximately 2/3<sup>rd</sup> of the UST systems in Iowa are inspected every year rules by their insurance carrier (Petroleum Marketers Mutual Insurance Company) for loss prevention purposes and compliance with the UST regulations. Casey's, Qwest Communications and others who self-insure wanted the inspection cycle increased to a 2-3 year cycle.

The recent Federal energy bill does contain a requirement for states to inspect UST sites at a minimum of every three years. An earlier version of the bill had a 2-year inspection cycle. These were minimums. The change to a 3-year cycle came after the U.S. EPA and some states argued that state UST programs did not have the resources to conduct inspections on a 2-year cycle.

Loss prevention is the main purpose of the UST inspection program. An annual compliance inspection is similar to an annual safety and maintenance check. Many of the UST compliance standards require documentation on an annual basis. There are advantages to owners and operators to have their systems inspected annually so that deficiencies can be corrected and thereby avoid department enforcement actions and penalty assessment. Less frequent inspections would defeat the purpose of this innovative program of combining private and public inspection of UST sites. The department believes annual inspections provide the owner/operator and the public the best protection against a release with the health and environmental problems a release can cause. As you extend the inspection cycle, the need for leak detection and maintenance can get lost in the daily business routine. The annual inspection cycle was kept in the rules.

Fred Hutson, Supervisor  
Underground Storage Tanks Section

December 29, 2005

## **ENVIRONMENTAL PROTECTION COMMISSION[567]**

### **Adopted and Filed**

Pursuant to the authority of Iowa Code section 455B.474, the Environmental Protection Commission adopted the following amendments to Chapter 134, “Certification of Groundwater Professionals,” and Chapter 135, “Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks,” Iowa Administrative Code. The notice of intended action for these rules was published in the 11/9/05 Iowa Administrative Bulletin as ARC 4653B.

The amendments to Chapter 134 establish a compliance inspector certification program to be administered by the Department of Natural Resources. The amendments set forth minimum qualifications for education and experience, training requirements, and provisions for certification suspension and revocation.

The amendment to Chapter 135 requires owners and operators to have their underground storage tank systems inspected every year for compliance using a Department certified compliance inspector. The rules will allow the Department to more effectively audit and target its inspection program as well as assist owners and operators to maintain consistent compliance with Department operation and maintenance rules.

The third-party inspection program has been developed as the result of a series of meetings with representatives for petroleum marketers, the UST insurance community, the environmental community and other stakeholders with a common objective of increasing compliance and preventing leaks from USTs.

The department held three public hearings in Denison, Coralville and Des Moines. Twelve written and oral comments were received. The main concerns were the frequency and cost of the inspections, and not allowing inspectors to inspect sites of their employer or sites where they installed or serviced the equipment.

The frequency of inspections in the rule is yearly. Comments ranged from supporting yearly inspections to extending inspections to every three years. The recent Federal energy bill does contain a requirement for states to inspect UST sites at a minimum of every three years. The stakeholders included annual inspections in their recommendations to prevent releases and foster

environmental protection. Currently, approximately 2/3<sup>rd</sup> of the UST systems in Iowa are inspected every year by UST insurers for purposes of loss prevention and compliance with the UST rules. Insured owners and operators are paying for these inspections through their insurance premiums. The rule would add an additional cost to the remaining site owners.

The requirement for yearly inspections has been retained in the rule. Loss prevention is the main purpose of the UST inspection program. Annual compliance inspections are a safety and maintenance check. The department believes annual inspections provide the owner/operator and the public the best protection against a release and the health and environmental problems that can result.

The inspection by a third party not employed by the owner/operator, financially controlled by the owner/operator or having previously installed UST equipment was included in the rules because of the concern for impartiality in the UST inspection and capability of determining fraudulent or inaccurate inspections. Some commentors noted that multiple parties have been involved in installing and repairing equipment and restricting installers from inspecting installations they have worked on could result in a shortage of inspectors and difficulty in determining who is a qualified inspector and who is not. They also wanted to use an installer in which they had confidence. Larger firms wanted to be able to use their own company inspectors who are more familiar with their operations who can be integrated into their environmental compliance management systems.

After considering the comments, the Commission decided to remove these restrictions on compliance inspectors. As long as the department maintains adequate field office personnel to audit compliance inspectors, conduct independent inspections and take disciplinary action as appropriate, there should be minimal problems. Self-inspection has been used in other environmental programs within the department. The electronic submittal of the inspection reports will allow the department to query the inspection reports for abnormalities to target potential problems with inspectors.

A summary of the rule comments with response is available from the Department.

These amendments are intended to implement Iowa Code section 455B.474.

The following amendments are adopted.

ITEM 1. Amend **567—Chapter 134**, title, as follows:

CHAPTER 134  
CERTIFICATION OF GROUNDWATER  
PROFESSIONALS *AND UNDERGROUND STORAGE*  
*TANK (UST) COMPLIANCE INSPECTORS*

ITEM 2. Amend **567—Chapter 134** by adopting the following **new** heading to precede rule 567—134.1(455G):

PART A  
CERTIFICATION OF GROUNDWATER PROFESSIONALS

ITEM 3. Amend **567—Chapter 134** by adopting the following **new** heading to precede rule 567—134.6(455B):

PART B  
CERTIFICATION OF UST COMPLIANCE INSPECTORS

ITEM 4. Adopt the following **new** rules:  
**567—134.6(455B) Definition.**

“UST compliance inspector” means a person who inspects a regulated underground storage tank (UST) to satisfy the requirements of 567—135.20(455B) for compliance with technical UST standards in 567—Chapter 135.

**567—134.7(455B) Certification requirements for UST**

**compliance inspectors.** A person retained by an owner or operator of an UST facility for the purpose of establishing compliance with the annual UST compliance inspection required by the department under 567—135.20(455B) must hold a current UST compliance inspector certification issued by the department. Inspector certification will be issued by the department only to a person who:

1. Possesses minimum experience and qualifications as provided in 567—134.8(455B).
2. Attends the required training approved by the department.
3. Achieves a passing grade on a certification examination administered or approved by the department.
4. Submits an accurate and complete application.

5. Is not found to be in violation of this chapter and has not had a certification revoked by the department pursuant to rule 567—134.17(455B) or by the underground storage tank fund board pursuant to 591—Chapter 15.

**567—134.8(455B) Certified inspector experience and qualifications.** An applicant must be an Iowa-licensed UST installer or installation inspector under 591—Chapter 15. except that requirement as set forth under 591-15.3(4) shall not be applicable to a certified UST compliance inspector.

**567—134.9(455B) Temporary certification.**

**134.9(1)** Until training and testing procedures are developed, the department may issue a temporary inspector certification to any person who:

a. Meets the minimum experience requirements under 567—134.8(455B).

b. Completes the U.S. EPA UST Web-based training modules: “Introduction to the Underground Storage Tanks (UST) Program” and “Basic UST Inspector Training” with a minimum passing grade of 85 percent.

**134.9(2)** A person issued a temporary UST compliance inspector certification must complete the approved training and pass the examination in accordance with 567— 134.11(455B) by April 1, 2007. Failure to achieve a passing grade on the examination before April 1, 2007, will result in revocation of temporary certification.

**567—134.10(455B) Application for inspector certification.**

**134.10(1)** The applicant shall be an individual.

**134.10(2)** An applicant for inspector certification shall submit, in addition to all applicable fees, an application on forms provided by the department. The application shall contain the following information:

a. Evidence that the applicant meets the experience and qualification prerequisites contained in 567—134.8(455B).

b. The applicant’s name, address and telephone number.

c. Other information necessary for a determination of the applicant’s qualifications.

**134.10(3)** Training and certification fees. A nonrefundable fee of \$500 in the form of a check or money order payable to the Department of Natural Resources must accompany the initial application for certification and each renewal application. The department will assess an additional fee for each training course and examination based upon the cost of administration.

**134.10(4)** An application for certification must be received by the department no later than 90 days prior to the announced date of the certification examination.

**134.10(5)** An application must be complete upon submission.

**134.10(6)** An applicant meeting the requirements of this rule will be granted admission to the examination for inspector certification.

**567—134.11(455B) Training and certification examination.**

**134.11(1)** Prior to taking the compliance inspector examination, the applicant must:

a. Complete the U.S. EPA UST Web-based training modules: “Introduction to the Underground Storage Tanks (UST) Program” and “Basic UST Inspector Training” with a minimum passing grade of 85 percent.

b. Attend the department’s inspector training course or designated approved course.

**134.11(2)** The department will establish administrative and technical content for the examination and the standards and criteria against which the department will evaluate candidates in determining the fitness of candidates for inspector certification.

**134.11(3)** At least once in each calendar year, the department will schedule a date and location for the examination for certification of inspectors.

**134.11(4)** Only applicants who have been authorized by the department to take an examination will be admitted to an examination or issued a certification as a result of passing an examination. Authorization to take an examination will be based on the applicant’s compliance with the requirements of this chapter.

**134.11(5)** To receive a passing grade on the examination, the applicant for certification must achieve a minimum score of 85 percent. An applicant who fails an initial examination may take a second examination.

**134.11(6)** The application of an applicant who fails the second examination will be terminated. An applicant who fails the second examination may reapply for inspector certification but may not retake the examination until the applicant has successfully completed a regularly scheduled

course of instruction that is administered or approved by the department. Successful completion means attendance at all sessions of training and attainment of the minimum passing grade established by the department for the approved training course.

**567—134.12(455B) Renewal of certification.**

**134.12(1)** Renewal period. Certification shall be for a two-year period and must be renewed by January 1 of each odd-numbered year. Applications for renewal must be submitted no later than 60 days prior to the expiration date. If a certified inspector fails to renew the certification by the expiration date, the department may grant, upon a showing of good cause, a 30-day grace period during which the applicant may submit the application and payment of the renewal fee.

**134.12(2)** Continuing education. Certified inspectors must successfully complete eight hours of training approved by the department to maintain certification.

**134.12(3)** Minimum inspections. In order to renew certification, an inspector must have conducted at least 25 compliance inspections each year.

**567—134.13(455B) ~~Environmental~~ Professional liability insurance requirements.**

**134.13(1)** All certified compliance inspectors are required to have ~~environmental~~ professional liability insurance with minimum liability limits of ~~\$250,000~~ \$1,000,000 per occurrence and in the aggregate. All persons covered by the certification provisions of this chapter shall provide written proof of coverage upon request of the department.

~~**134.13(2)** Forms of acceptable insurance. All parties covered by the certification provisions of this chapter shall provide evidence of environmental \$1,000,000 liability insurance to the director upon request.~~

~~a. Environmental liability insurance may be provided by a private insurer authorized to do business in Iowa.~~

~~b. Evidence of environmental liability insurance may be provided using methods of self-insurance as outlined in 567—Chapter 136.~~

**567—134.14(455B) Licensed company.** A company employing certified UST compliance inspectors shall be registered with the department as a licensed UST compliance company. A company shall lose its license if it fails to employ at least one certified inspector or if it employs



uncertified individuals to do compliance inspections required by the department. The annual license fee is \$50.

**567—134.15(455B) Compliance inspection.** The UST compliance inspector shall conduct a compliance inspection in accordance with the standards set out in 567— 135.20(455B) and with department written instructions and guidelines.

**134.15(1)** The inspector shall record the inspection on a form provided by the department and conduct the inspection to address all items contained on the inspection form.

**134.15(2)** Any problems observed during the inspection must be photographed using ~~at least a 4.0 megapixel~~ digital camera at 1-2 megapixel resolution. The digital photographs must be included as part of the inspection report.

**134.15(3)** The compliance inspector must submit the inspection report electronically to the department within 14 days of the inspection.

**134.15(4)** A printed copy of the inspection report must be submitted to the owner and operator of the UST system. The inspector shall require the owner and operator to address any compliance violations or deficiencies in accordance with 567—Chapter 135 or, if no time frames are established by rule, within 60 days or another reasonable time period approved by the department.

**134.15(5)** The compliance inspector shall follow up on any actions required of the owner and operator to correct any compliance violations or deficiencies ~~found during the inspection. Any documentation of violations or deficiencies for which corrections are required must be submitted to the department.~~ and submit a report to the department within 60 days of the inspection.

**134.15(6)** Any product releases found during the inspection must be reported to the department within 24 hours.

**134.15(7)** Any records provided by the owner and operator to the compliance inspector must be forwarded to the department.

**134.15(8)** ~~An inspector shall not conduct compliance inspections at UST facilities owned or operated by the inspector's employer or at facilities at which the inspector has been directly responsible for the installation or repair of the UST system.~~

~~134.15(9) A licensed company may not conduct compliance inspections at UST facilities where the company has been directly responsible for the installation or repair of the UST system or at facilities owned or operated by a company which has a controlling interest in the licensed company.~~

**567—134.16(455B) Disciplinary actions.**

**134.16(1)** The department may impose disciplinary actions which may include, but are not limited to, notices of deficiency, probationary notices, suspension of a certification or license and, pursuant to 567—134.17(455B), revocation of a certification or license.

**134.16(2)** A notice of deficiency or probationary notice shall not be an appealable decision. The recipient of a notice may contest the basis for the notice in writing, and such response shall be made part of the certification record. A person subject to a notice to suspend or revoke a certification may appeal the notice as provided in 567-chapter 7.

**134.16(3)** The department may suspend the certification of a certified inspector or licensed company for good cause, and based on single acts or omissions or repeated acts or omissions. The suspension may require the certified inspector to take remedial measures intended to correct or prevent future acts and omissions. Good cause includes, but is not limited to:

- a. A violation of these rules.
- b. Negligent misrepresentation of material facts in a compliance report.
- c. Negligent failure to identify a material violation of UST operation and maintenance standards set out in 567— 135.20(455B).
- d. Repeated failure to conduct compliance inspections and submit reports in accordance with the standards set out in 567—135.20(455B).
- e. Incompetence on the part of the certified inspector as evidenced by errors in the performance of duties and activities for which the certification was issued.
- f. In the case of a certified inspector:
  - (1) Failure to inform the owner or operator and the department of conditions or procedures that are not in accordance with the manufacturer's technical and procedural specifications for installation, construction, modification or operation of the storage tank system or storage tank facility.
  - (2) Failure to conduct, review or observe an activity required by the department.

(3) Repeated failure to submit reports of inspection activities to the department within 14 days of conducting the inspection activities or to provide the owner and operator a copy of the inspection report.

**134.16(4)** The suspension of a company license or inspector certification shall prevent the company or person from engaging in activities for which certification or licensure is required.

**134.16(5)** The department may require that the certified inspector successfully complete a special training program, examination or other remedial measures sponsored or approved by the department and designed to strengthen the specific weakness in the certified inspector's performance of duties as identified in the suspension order.

**134.16(6)** A certified inspector or licensed company shall immediately surrender the certificate or license, as applicable, to the department as of the effective date of a suspension order. The department may reinstate the certification or license if it is determined:

- a. The person has satisfied the terms of the suspension order.
- b. The person is competent to execute duties and responsibilities for which the certificate or license was issued.

**567—134.17(455B) Revocation of inspector certification or company license.**

**134.17(1)** The department may revoke the inspector certification or company license for one or more of the following:

- a. Willful disregard of, or willful or repeated violations of, this chapter or 567—Chapter 135.
- b. Fraudulent omissions or misstatements of material facts in a compliance inspection report or in other written or oral communications with the department.
- c. A knowing and willful failure to detect and report a material violation of UST operation and maintenance standards as part of a compliance inspection required by 567— 135.20(455B).
- d. Acts or omissions warranting suspension after having certification or license previously suspended.
- e. The revocation of a certification as an installer or installation inspector under 591—Chapter 15.

**134.17(2)** A certified inspector or licensed company shall immediately surrender certification or licensing documents after the effective date of a revocation decision.

These rules are intended to implement Iowa Code section 455B.474.

ITEM 5. Amend 567—Chapter 135 by adding the following new rule:

**567—135.20(455B) Annual inspection of UST system.**

**135.20(1)** The owner or operator of an UST system must have the UST system inspected annually by an UST compliance inspector certified by the department under 567— Chapter 134.

- a. For an active petroleum UST system, the inspection must be conducted prior to the annual expiration date of the financial responsibility mechanism.
- b. For a temporarily closed UST system, the inspection must be conducted prior to the anniversary date of the temporary closure of the UST system.
- c. For an UST system containing hazardous substances, the inspection must be conducted prior to July 1 of each year.
- d. Within seven days of the inspection, the certified UST compliance inspector must submit to the department the inspection report in an electronic format provided by the department.

**135.20(2)** An inspector of an UST system must check for compliance with the technical standards of Chapter 135 following the department's guidance and inspection form. The inspection of an UST system currently in operation shall include, but not be limited to, the following:

- a. The material currently stored in the UST.
- b. The type of tank and lines currently at the site as compared to the registered information on the department's database.
- c. Checking site records demonstrating operational compliance, 135.4(5).
- d. Checking release detection records, 135.5(6).
- e. Visually checking for releases or other violations by opening covers of dispensers, manways, and containment sumps for submersible pumps and other piping connections for:
  - (1) Indications of a product release and leaking equipment.
  - (2) Deteriorating product lines or excessive bends in product lines or flex connectors.
  - (3) Proper anchoring of breakaways (dispensers only).
- f. Current operating status of cathodic protection system, if present.

g. Presence and operational condition of spill and overfill equipment, 135.3(1)“c.”

Any problems observed during the inspection must be photographed using ~~at least a 4.0 megapixel~~ digital camera at 1-2 megapixel resolution. The digital photographs must be included as part of the inspection report.

**135.20(3)** A temporarily closed UST system inspection must include, but not be limited to, the following:

- a. The type of tank and lines currently at the site as compared to the registered information on the department’s database.
- b. Checking site records demonstrating applicable operational compliance, 135.4(5).
- c. Current operating status of cathodic protection system, if present.
- d. Checking for compliance with temporary closure requirements in 135.15(1).

**135.20(4)** When the compliance inspection finds violations of the department’s rules:

a. ~~The owner and operator have 60 days from the date of the inspection to correct the violation.~~  
The inspector shall require the owner and operator to address any compliance violations or deficiencies in accordance with 567-Chapter 135 or, if no time frames are established by rule, within 60 days or another reasonable time period approved by the department. The grant of time to remedy a violation does not preclude the Department from exercising its discretion to assess penalties for the violation.

b. Documentation that the violation has been corrected must be submitted to the compliance inspector within 60 days of the inspection.

c. The department may require a follow-up inspection in instances where there are serious problems or a history of repeated violations.

~~**135.20(5)** An owner or operator shall not contract with a compliance inspector who is an employee of the owner or operator or who has been directly responsible for installation or repair of the UST system. An owner or operator shall not contract with a licensed company in which the owner or operator has a controlling interest.~~